



Bryce
Downey
& Lenkov, LLC

Workers' Compensation Newsletter

January 2019

Dear **Rich**



What accident investigation information is most important to relay to supervisors?

— Kathy, Palos Heights, IL

By [Rich Lenkov](#)

Workers' Compensation Practice Chair

What your supervisor needs is ultimately what we as your attorney need: **evidence**.

Obviously, the who, what, when, where and why of the accident is important. Pull video. Interview co-workers. Preserve evidence. You want your supervisor gathering all of that basic information so that they can determine what happened and how to avoid it future accidents.

From a claims perspective, your supervisor should find out not only what happened, but what didn't happen. Were there witnesses? Suspicious activity? Was there any other possible motivators for the claim, like disciplinary action? Those factors in and of themselves may not be enough to warrant a denial. However, they will certainly raise red flags that cause you to dig deeper into what otherwise may appear to be a routine accident.

Please submit your most pressing workers' compensation questions to mkt@bdlfirm.com and Rich will respond in the next newsletter.

Legislative Update

By [Michael Milstein](#)

Income Member



Since the veto session has ended and as we wait for Governor-Elect Pritzker to be sworn in, there has been no new proposed legislation. However, we expect 2019 to usher in many changes to the workers' compensation landscape from new arbitrators, commissioners, chairperson and legislation.

Importantly, Illinois has moved from the 8th highest in WC premiums (in 2016) to 22nd highest (in 2018) representing one of the largest drops in the country. We believe this drastic change is due to reforms in 2011 that helped lower the fee schedule and reduce PPD awards. Hopefully, lawmakers will see the positive changes that have been done and keep building on it.

At the Commission, Nancy Lindsay announced her retirement and Ketki Steffen was elected to the Circuit Court bench.

Legal Face-Off

Podcast



Legal Face-Off is a fast paced, high energy legal program dealing with the hottest issues of the day. Rich Lenkov and Christina Martini provide a legal point/counterpoint perspective on issues ranging from Hollywood celebrities, athletes, politicians and everything in between.

Sound Bite: In the first episode of 2019, Rich and Tina speak with Chico & Nunes attorney and former Mayor Daley Chief of Staff Gery Chico, about his Chicago mayoral candidacy. They also discuss Gery's opinion of the recent extortion scandal involving Alderman Ed Burke.

Rich Lenkov: What are your thoughts on the Burke situation? You've come out with some thoughts on it as well as the allegation that Toni Preckwinkle—who is one of your chief rivals for the mayoral spot—received a campaign donation as part of this whole alleged shakedown.

Gery Chico: I think she got the campaign donation. They didn't report it right away and they have some explaining to do about that, but I'll let them handle their own explaining. I think the situation with Alderman Burke is disturbing. I obviously don't like to hear those allegations and he'll have his day in court. I think he did the right thing by stepping down from the chairmanship of the Finance Committee because we have to remember that the most important interests are those of the people. The city government has to continue to function without distraction and without delay. I'm glad that the alderman stepped down to let city business continue unhampered.



[Listen to Full Episode Here](#)

Recent Topics

- Alderman Burke
- Mueller investigation
- 'El Chapo' trial
- Making a Murderer 2
- Chicago mayoral candidates
- Van Dyke trial
- #MeToo Movement

Past Guests

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Directors Julie Cohen and Betsy West of RBG

[RBG, Jeff Bezos, Cop to Yoga, R. Kelly and much more](#)

[Flynn, ACA, Sandra Bland documentary & more](#)

[Jeffrey Cramer on Trump, inside out, planned parenthood, Fleetwood Mac settlement and much more](#)

[Mayoral candidate Dorothy Brown, Asha Rangappa on Mueller, El Chapo trial, Laquan McDonald trial part II & much more](#)

[Making a Murderer 2: attorneys Zellner & Buting, Van Dyke defense lawyer Herbert, Frenkel on AG](#)

[Erika Harold in studio, consent decree, lottery lawsuits and more](#)



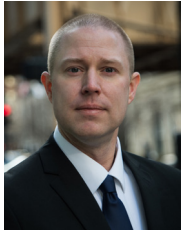
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Please Like Us on **Facebook**, **Twitter** and **Subscribe on iTunes**. Send us your questions and we will answer them on air — **nothing is off-limits**.

Don't Do Your Best, Do My Best

By [Jesse Lanshe](#)

Associate



In *Harrington v. City of Chicago*, 26 ILWCLB 162 (Ill. W.C. Comm. 2018), IWCC affirmed a wage differential arbitration award that was based upon Petitioner's subpar job search efforts.

Petitioner, a sanitation laborer who injured her shoulder, earned approximately \$36.21/hr. After post-surgery FCE, Petitioner was discharged with permanent restrictions. The employer could not accommodate the restrictions and started vocational rehabilitation.

A labor market survey indicated that Petitioner could obtain employment earning between \$9-\$14.00/hr. However, due to Petitioner's subpar job search efforts, she did not secure any interviews or employment. The arbitrator found that Petitioner exhibited "less than maximum effort." Because of this, it was reasonable to use the highest paying job for which Petitioner was qualified to calculate the wage differential.

Practice Tip:

Carefully scrutinize a petitioner's job search efforts during vocational rehabilitation. Evidence of less than maximum effort can support a lower wage differential award.

Practice Tip:

For parking lot cases involving snow and ice, evidence demonstrating that the snow/ice was a natural accumulation can bolster our accident defense. As such, be sure to secure photographic evidence of parking lot conditions as soon as possible after a reported accident.

View more information on our **Workers' Compensation practice.**

Our other practices include:

- [Appellate Law](#)
- [Business Law](#)
- [Condominium Law](#)
- [Construction Law](#)
- [Entertainment Law](#)
- [General Liability](#)
- [Healthcare Law](#)
- [Insurance Law](#)
- [Intellectual Property](#)
- [Labor & Employment](#)
- [Products Liability](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation Law](#)

IWCC Reverses Benefits in Icy Parking Lot Case

By [Tim Alberts](#)

Associate



In *Smith v. Manhattan Park District*, 11WCC019917; 17IWCC0462, IWCC reversed the Arbitrator's award of benefits for Petitioner's injuries from a slip and fall in an icy parking lot while walking into work.

The arbitrator found that since Petitioner would not have been in the parking lot but for the fact that Petitioner had to work that day, the accident was compensable and awarded benefits.

On appeal, IWCC reversed, finding that situational risk (Petitioner would not have been in the parking lot but for having to work) is not sufficient under the Act to establish a compensable accident. IWCC highlighted that the parking lot contained a natural accumulation of snow, there was no evidence that Respondent contributed to the hazardous condition and that the parking lot was open to the general public. Consequently, IWCC found that the accident did not arise out of and in the course of Petitioner's employment and reversed the arbitrator's award of benefits.

Firm News

Rich Lenkov Discusses Alderman Burke's Extortion Charge on Steve Cochran Show

Rich Lenkov was featured on WGN's Steve Cochran show on 1/4/19 discussing the recent extortion charge against Alderman Ed Burke.

Rich stated that wire taps are a key element in the government's case and discussed the prosecution's decision to use a complaint instead of an indictment. Rich also covered Burke's body language in court, how the case affects Toni Preckwinkle's mayoral campaign, as well as Burke's wife, Illinois Supreme Court Justice Anne Burke.

[Listen to the full segment here.](#)



Jeanne Hoffmann and Margery Newman Included in Top Women Lawyers of Chicago

Jeanne Hoffmann and Margery Newman have both been selected to this year's Leading Lawyers' list of Top Women Lawyers in Chicago. Selected attorneys are evaluated based on peer recommendation and represent some of the best female legal representation in the region.

[Click here to view the full list of Top Women Lawyers.](#)



Jeanne Hoffmann



Margery Newman



BDL Holiday Party

The firm held its annual holiday party on 12/21/18. We hope you had a great holiday season and wish you a happy new year!



Construction Litigation Dispute Resolution Program

Geoff Bryce and Samuel Levine presented at the Illinois Institute for Continuing Legal Education's "Construction Litigation Dispute Resolution" conference on 12/12/18. Geoff presented "Insurance: Coverage for Construction Defects and Who Wants to be an Additional Insured?" Sam discussed "Construction Defects Litigation."

[For more information, please click here.](#)

Rich Lenkov Published In *Workers' Compensation Magazine*

Rich Lenkov moderated a forum for the winter issue of *Workers' Compensation Magazine*. "2019 Workers' Compensation Predictions" featured industry professionals that reflected on the biggest challenges of 2018 and forecast for 2019.

[Click here to view the full article.](#)



BDL Webinars & Seminars

Upcoming Free Webinars

Top 10 Red Flags

January 24, 2019

[Rick Lenkov](#) and [Tim Alberts](#)



[REGISTER NOW!](#)



Watch a clip from our latest webinar.



Recent Webinars

- 2018 Review
- WC Issues Raised by Millennials
- WC Horror Stories
- Defending Shoulder and Knee Injuries, feat. Chicago Bulls & White Sox Doctor Brian Cole
- Key Differences in IL & IN Workers' Compensation
- Injuries Away from Work
- Settlement Strategies
- When Is An Employee Not An "Employee"?
- Ask Us ANYTHING
- Top 10 Differences Between IL WC & GL Claims

If you would like a copy of our other prior webinars, please email us at mkt@bdlfirm.com.

Cutting Edge Continuing Legal Education

If you would like us to come to you for a free seminar, [Click here](#) or email [Rich Lenkov](mailto:Rich.Lenkov).

Our attorneys regularly provide free seminars on a wide range of labor and employment law topics. We speak to companies of all sizes and national organizations. Among the national conferences at which we've presented:

- American Conference Institute (ACI)
- Claims and Litigation Management Alliance Annual Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-conference
- Employment Practices Liability Insurance ExecuSummit
- National Association of Security Companies (NASCO)
- National Workers' Compensation and Disability Conference® SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- RIMS Annual Conference

Upcoming Events

- **2/7/19** – [Rich Lenkov](#) will join a panel titled "5 Hot WC Topics from 3 Different States" at Lockton Law Day in Denver. Lockton Law Day is filled with a variety of interesting topics for employers, insurance and risk management professionals.

[Register now.](#)
- **2/6/19** – [Michael Milstein](#) and [Emily Schlecte](#) will attend the 2019 CLM Retail, Restaurant and Hospitality Conference in Grapevine, TX.
- **2/10/19** – [Brian Rosenblatt](#) will attend the 61st GRAMMY Awards. Brian has been a member of the National Academy of Recording Arts & Sciences for 22 years.

Illinois Rates At A Glance



**Bryce
Downey
& Lenkov LLC**

PPD Benefits Schedule Of Body Parts

Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
1/15/11 - 7/14/11	1,243.00	466.13	930.39
7/15/11 - 1/14/12	1,261.41	473.03	946.06
1/15/12 - 7/14/12	1,288.96	483.36	966.72
7/15/12 - 1/14/13	1,295.47	485.80	971.60
1/15/13 - 7/14/13	1,320.03	495.01	990.02
7/15/13 - 1/14/14	1,331.20	499.20	998.40
1/15/14 - 7/14/14	1,336.91	501.34	1,002.68
7/15/14 - 1/14/15	1,341.07	502.90	1,005.80
1/15/15 - 7/14/15	1,361.79	510.67	1,021.34
7/15/15 - 1/14/16	1,379.73	517.40	1,034.80
1/15/16 - 7/14/16	1,398.23	524.34	1,048.67
7/15/16 - 1/14/17	1,428.74	535.79	1,071.58
1/15/17 - 7/14/17	1,435.17	538.19	1,076.38
7/17/17 - 1/14/18	1,440.60	540.23	1,080.45

Effective Dates	Maximum PPD
7/1/06 - 6/30/07	619.97
7/1/07 - 6/30/08	636.15
7/1/09 - 6/30/10	664.72
7/1/10 - 6/30/11	669.64
7/1/11 - 6/30/12	695.78
7/1/12 - 6/30/13	712.55
7/1/13 - 6/30/14	721.66
7/1/14 - 6/30/15	735.37
7/1/15 - 6/30/16	755.22
7/1/16 - 6/30/17	775.18
7/1/17-6/30/18	790.64

Minimum Rate Death & Total Permanent Disability:
50% of the Statewide Average Weekly Wage

Maximum Rate Death Benefit:
The greater of \$250,000 or 20 years
Effective 2/1/06 – the greater of
\$500,000 or 25 years

Temporary Total Disability (TTD) Rate:
66-2/3% (.667) x AWW

Permanent Partial Disability (PPD) Rate:
60% (.6) x AWW

*Number if children and/or spouse = number of dependents.

Minimum TTD & PPD	Single	Married	1 DEP.	2 Dep.	3 Dep.	4+ Dep.
TTD & PPD 7/15/10 - 7/14/17	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

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For Injuries Occurring	Before 7/20/05	7/20/05 - 11/15/05	11/16/05 - 1/31/06	2/1/06 - 6/27/11	On or after 6/28/11
Disfigurement	150	162	150	162	162
Thumb	70	76	70	76	76
First (Index) Finger	40	43	40	43	43
Second (Middle) Finger	35	38	35	38	38
Third (Ring) Finger	25	27	25	27	27
Fourth (Little) Finger	20	22	20	22	22
Great Toe	35	38	35	38	38
Each Other Toe	12	13	12	13	13
Hand	190	205	190	205	205
Carpal Tunnel Due To Repetitive Trauma					28.5 - 57
Arm	235	253	235	253	253
Amputation Above Elbow	250	270	250	270	270
Amputation At Shoulder Joint	300	323	300	323	323
Foot	155	167	155	167	167
Leg	200	215	200	215	215
Amputation Above Knee	225	242	225	242	242
Amputation At Hip Joint	275	296	275	296	296
Eye	150	162	150	162	162
Enucleation Of Eye	160	173	160	173	173
Hearing Loss Of One Ear (Under WC Act)	50	54	50	54	54
Hearing Loss Of Both Ears (Under WC Act)	200	215	200	215	215
Testicle--1	50	54	50	54	54
Testicle--2	150	162	150	162	162
The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.					

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